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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/596,081	06/16/2000	Michael F. Brice	11047.100	2958

7590 03/12/2003

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EXAMINER

GRAHAM, GARY K

ART UNIT	PAPER NUMBER
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1744

DATE MAILED: 03/12/2003

16

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application N .

09/596,081

Applicant(s)

BRICE, MICHAEL F.

Examiner

Gary K Graham

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 December 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 2-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other:  |

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## DETAILED ACTION

### *Continued Examination Under 37 CFR 1.114*

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 21 October 2002 has been entered.

### *Claim Objections*

The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Applicant has attempted to reintroduce claim 1 which was cancelled in the 7 March 2002 amendment. Misnumbered claims 1, 10 and 11 of the 21 October 2002 amendment have been renumbered 10, 11 and 12, respectively. Please note that dependent claims have been changed such that they depend from the appropriate claim. For example, in claim 2, line 1, "1" has been changed to ---10---.

*Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 8-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Brice '421.

The patent to Brice discloses the invention as is claimed. Note figure 10 which shows a toothbrush including an elongated handle (61) shaped to be grasped by a user, a first and second neck (64L,64R) extending from an end of the handle and said necks supporting first and second bristle supports or head (66,67) at distal ends thereof. A plurality of first and second bristles extend from the respective heads. Said first and second bristles extend in the same direction and are substantially parallel to one another.

The "wherein" phrases at the end of claims 9-12 do not appear to define any structure not shown or suggested by the Brice patent. The first and second plurality of bristles of the Brice

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patent will have a stiffness and the first and second necks will have a resiliency, flexibility and bending resistance as is claimed. Defining that the resiliency, flexibility and bending resistance are set depending upon both brushing force and stiffness of bristles such that the toothbrush adapts to a dento-gingival junction and all other changing surfaces does not define any particular structure or structural relationships not set forth by the Brice patent. Further, since the patent to Brice discloses all of the structure claimed, it appears it will inherently function as is claimed. Why would the toothbrush of Brice not adapt as is claimed? What is the physical difference between the toothbrush disclosed in the patent and that which is claimed?

*Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brice '421 in view of Lamond et al '510.

The patent to Brice discloses all of the above recited subject matter with the exception of the handle having an oval-shaped cavity therein with an oval-shaped resilient thumb contact inserted therein.

The patent to Lamond discloses a toothbrush (fig.1) including a handle (4) with an oval-shaped cavity (24) therein and an oval-shaped resilient pad (20) inserted into said cavity.

Resilient pads, as disclosed by Lamond, are known to be provided with toothbrush handles to increase the grip of the user.

It would have been obvious to one of skill in the art to provide the handle of Brice with a cavity and a resilient pad therein, as clearly suggested by Lamond, to increase the grip of the user of such toothbrush.

### *Response to Arguments*

Applicant's arguments filed 21 October 2002 have been fully considered but are not persuasive. Applicant argues that the '421 patent discloses no relationship between the stiffness of the bristles and the resilience, flexibility and bending resistance of its necks and thus does not anticipate the claims. However, it is noted that no particular relationship has been claimed. At least none not disclosed or inherently achieved by the '421 patent. Applicant appears to be claiming that the necks are set depending on the brushing force and stiffness of the bristles such that the toothbrush adapts to a dento-gingival junction and all other changing surfaces. This does not define any particular relationship. Merely claiming that various components of the toothbrush are designed, one part being "set" with respect to another part, to brush well does not appear to distinguish from the '421 patent. Applicant cannot define over the disclosed equivalent structure of the '421 patent by mere desired functioning, especially when such

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functioning is reasonably expected to be performed by the '421 toothbrush. Further, since the '421 patent discloses all the structure that is claimed, it should inherently function or be "set" as is claimed. Why would the '421 toothbrush not perform or be "set" as is claimed?

The logic of the above arguments apply to claims 9, 11 and 12 as such claims also set forth "wherein" statements attempting to relate the various characteristics (bristle stiffness, brushing force, resiliency, flexibility and bending resistance of the necks) in a slightly different manner. Again, applicant cannot define over the disclosed equivalent structure of the '421 patent by mere desired functioning, especially when such function is reasonably expected to be performed by the '421 toothbrush. Further, since the '421 patent discloses all the structure that is claimed, it should inherently be "set" to function as is claimed.

### *Conclusion*

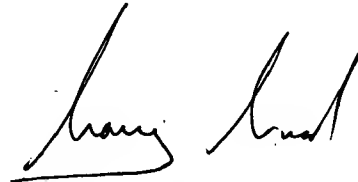
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary K Graham whose telephone number is 703-308-1270. The examiner can normally be reached on Tuesday to Friday (6:30-4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Warden can be reached on 703-308-2920. The fax phone numbers for the

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organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

A handwritten signature in black ink, appearing to read "Gary K. Graham". The signature is fluid and cursive, with the first name "Gary" being more prominent than the last name "Graham".

Gary K Graham  
Primary Examiner  
Art Unit 1744

GKG  
March 11, 2003